

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:23-CR-00141-M-BM

UNITED STATES OF AMERICA

v.

DEVANTE TYRELL BYNUM

MOTION TO DISMISS INDICTMENT

Defendant Devante Tyrell Bynum, through undersigned counsel, respectfully asks this Court to dismiss the indictment pursuant to Fed. R. Crim. P. 12(b)(3)(B)(v). The statute Mr. Bynum allegedly violated, 18 U.S.C. § 922(g)(1), violates his Second Amendment right to keep and possess arms, both facially and as applied to Mr. Bynum.

On May 3, 2023, Mr. Bynum was charged in a single-count indictment in the Eastern District of North Carolina of with one count of being a felon in possession of a firearm on November 27, 2022, in violation of 18 U.S.C. § 922(g)(1). D.E. 1. Pursuant to *New York State Rifle & Pistol Association, Inc. v. Bruen*, ___ U.S. ___, 142 S. Ct. 2111 (2022), Section 922(g)(1) is facially unconstitutional and unconstitutional as applied to Mr. Bynum. If “the Second Amendment’s plain text covers an individual’s conduct,” then under *Bruen*, “the Constitution presumptively protects that conduct.” *Id.* at 2129-30. To rebut the presumption, the government must show that a challenged law “is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 2129-30. The test for historical consistency is demanding: a firearm regulation is consistent with American tradition only if similar regulations were widespread and commonly accepted in the founding era. Because possession of a firearm comes within the Second Amendment’s

“plain text,” Mr. Bynum’s alleged conduct is presumptively protected. The government cannot rebut that presumption. Felon-disarmament laws, which did not appear in the United States until the 20th century, were unknown to the generation that ratified the Second Amendment. Pursuant to *Bruen*, Section 922(g)(1) violates the Second Amendment as it was understood at the time of its adoption, on its face and as applied to Mr. Bynum. *See, e.g., Range v. Attorney General*, 69 F.4th 96 (3d Cir. Feb. 15, 2023) (en banc), *United States v. Bullock*, No. 3:18-CR-00165-CWR-FKB, D.E. 79 (S.D. Miss. June 28, 2023), *United States v. Forbis*, No. 4:23-CR-00133-GKF, D.E. 37 (N.D. Okla. Aug. 17, 2023); *United States v. Quail*, No. 1:21-CR-00176-JPW, D.E. 102 (M.D. Pa. Aug. 22, 2023); *United States v. Harper*, No. 1:21-CR-00236-JPW, D.E. 82 (M.D. Pa. Sept. 1, 2023). The Court, therefore, should dismiss the indictment.

Respectfully submitted, this the 29th day of September, 2023.

G. ALAN DUBOIS
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served upon:

ASHLEY H. FOXX
Assistant United States Attorney
United States Attorney's Office - EDNC
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by electronically filing the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the above.

This the 29th day of September, 2023.

/s/ Snayha M. Nath
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